

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2586

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2586.

This bill, as amended, would address the elimination of mandatory minimum terms of imprisonment by:

(1) removing the crime of official misconduct from the list of offenses found in section 6 of P.L.2007, c.49 (C.2C:43-6.5) for which a person who serves or has served as a public officer or employee under the government of this State, or any political subdivision thereof, would be sentenced to a mandatory minimum term of imprisonment if the offense involved or touched upon such office or employment; and

(2) implementing several of the recommendations contained in the first annual report of the New Jersey Criminal Sentencing and Disposition Commission (the CSDC), created by P.L.2009, c.81 (C.2C:48A-1 et seq.) but delayed in being constituted and actively reviewing the State's sentencing laws. The specific focus of this aspect of the bill involves Recommendations 1 through 3 of the commission's report, issued in November 2019. In accordance with Recommendations 1 and 2, the bill would eliminate mandatory minimum terms of imprisonment for various nonviolent drug-related and property crimes, which under current law are typically fixed at, or between, one-third and one-half of the sentence imposed. The bill would also reduce the mandatory term of imprisonment for second degree robbery and second degree burglary from 85 percent of the sentence imposed, as required under current law pursuant to section 2 of P.L.1997, c.117 (C.2C:43-7.2), known as the No Early Release Act (NERA), to 50 percent of the sentence imposed, based on Recommendation 3.

As to Recommendation 1, the bill would eliminate mandatory minimum sentences for the following non-violent drug offenses:

- maintaining or operating a controlled dangerous substance production facility used to manufacture methamphetamine, lysergic acid diethylamide (LSD), phencyclidine (PCP or "angel dust"), gamma hydroxybutyrate (e.g, one form of "date rape" drug), flunitrazepam (e.g., "Rohypnol" or "roofies," another "date rape" drug), marijuana in

an amount greater than five pounds or ten plants or any substance listed in Schedule I or II, see N.J.S.2C:35-4;

- manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense, heroin or coca leaves in a quantity of five ounces or more, lysergic acid diethylamide (LSD) in a quantity of 100 milligrams or more, or phencyclidine (PCP or “angel dust”) in a quantity of 10 grams or more, see paragraphs (1) and (6) of subsection b. of N.J.S.2C:35-5;

- employing a juvenile in a drug distribution scheme, see N.J.S.2C:35-6;

- distribution of a controlled dangerous substance on or within 1,000 feet of school property, see subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7);

- distribution of a controlled dangerous substance to persons under the age of 18 years or pregnant females, see N.J.S.2C:35-8; and

- a repeat drug offender, whose current conviction was for any of the above listed crimes other than N.J.S.2C:35-8, distributing to persons under the age of 18 years or pregnant females, and who has a previous conviction for a violation of N.J.S.2C:35-5, manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute, or dispense any controlled dangerous substance; however, if a repeat offender is facing a current conviction for being a leader of a narcotics trafficking network, N.J.S.2C:35-3, the bill would permit the imposition of a mandatory term of imprisonment fixed at, or between, one-third and one-half of the sentence imposed, or three years, whichever is greater.

As to Recommendation 2, the bill would eliminate mandatory minimum sentences for the following non-violent property crimes:

- a second or subsequent offense as leader of a cargo theft network, see subsection e. of section 4 of P.L.2013, c.58 (C.2C:20-2.4);

- a second or subsequent offense involving theft from a cargo carrier, see subsection c. of section 6 of P.L.2013, c.58 (C.2C:20-2.6);

- a third or subsequent offense for shoplifting, see paragraph (4) of subsection c. of N.J.S.2C:20-11; and

- wrongful electronic access and disclosure of information, subsection b. of section 10 of P.L.1984, c.184 (C.2C:20-31);

Lastly, concerning Recommendation 3, the bill, as noted above, would reduce the mandatory term of imprisonment for second degree robbery, N.J.S.2C:15-1, and second degree burglary, N.J.S.2C:18-2, from 85 percent of the sentence imposed, as required under current law pursuant to NERA, to 50 percent of the sentence imposed.

This bill, as amended and reported by the committee, is identical to the First Reprint of Assembly Bill No. 4369, also amended and reported by the committee today.

The committee amendments to the bill:

- correct the citations for the offenses of leader of a cargo theft network and theft from a cargo carrier, as well as delete the unofficial editor headnote from section 1 of P.L.1987, c.101 (C.2C:35-7) (renumbered section 8 of the bill; originally section 10); this headnote is not part of the text of the official statutory law, see R.S.1:1-6 and N.J.S.2C:1-1, and was not intended to be added to the statute as evidenced by it not being distinguished with an underline in the bill as introduced to indicate it as new, amendatory text;

- remove the offenses of computer theft, section 4 of P.L.1984, c.184 (C.2C:20-25), several forms of which carry mandatory minimum terms of imprisonment, and leader of a narcotics trafficking network, N.J.S.2C:35-3, which also carries a mandatory minimum term, so sentences for these offenses would still include mandatory minimum terms;

- reestablish a mandatory minimum term of imprisonment for a repeat drug offender facing a current conviction for being a leader of a narcotics trafficking network, N.J.S.2C:35-3, as described in the statement above; this mandatory minimum term was eliminated in the bill as introduced;

- delete the crime of official misconduct from the list of offenses found in section 6 of P.L.2007, c.49 (C.2C:43-6.5) for which a public servant would be sentenced to a mandatory minimum term of imprisonment, as described in the statement above;

- eliminate the addition of a defendant being under the age of 26 years at the time of committing an offense as a mitigating factor for consideration by a court imposing a sentence; the concept of establishing youthful age as a mitigating factor in sentencing is incorporated in separate bills, Senate Bill No. 2592 and its identical counterpart, Assembly Bill No. 4373, both of which were considered and reported by the committee today; and

- update the bill's title and synopsis to more accurately reflect the provisions of the amended version of the bill.